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HOUSE BILL 593

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Rory J. Ogle

AN ACT

RELATING TO JUVENILE JUSTICE; PROVIDING THAT A YOUTHFUL
OFFENDER WHO HAS PREVIOUSLY BEEN SENTENCED AS AN ADULT BE
SENTENCED AS AN ADULT UPON CONVICTION FOR HIS INSTANT OFFENSE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-20 NMSA 1978 (being Laws 1993,
Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER. --

A. The court has the discretion to invoke either an
adult sentence or juvenile sanctions on a youthful offender.
The children's court attorney shall file a notice of intent to
invoke an adult sentence within ten working days of the filing
of the petition, provided that the court may extend the time
for filing of the notice of intent to invoke an adult sentence,
for good cause shown, prior to the adjudicatory hearing. A

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1 preliminary hearing by the court or a hearing before a grand
2 jury shall be held, within ten days after the filing of the
3 intent to invoke an adult sentence, to determine whether
4 probable cause exists to support the allegations contained in
5 the petition.

6 B. If the children's court attorney has filed a
7 notice of intent to invoke an adult sentence and the child is
8 adjudicated as a youthful offender, the court shall make the
9 following findings in order to invoke an adult sentence:

10 (1) the child is not amenable to treatment or
11 rehabilitation as a child in available facilities; and

12 (2) the child is not eligible for commitment
13 to an institution for the developmentally disabled or mentally
14 disordered.

15 C. In making the findings set forth in Subsection B
16 of this section, the judge shall consider the following
17 factors:

18 (1) the seriousness of the alleged offense;

19 (2) whether the alleged offense was committed
20 in an aggressive, violent, premeditated or willful manner;

21 (3) whether a firearm was used to commit the
22 alleged offense;

23 (4) whether the alleged offense was against
24 persons or against property, greater weight being given to
25 offenses against persons, especially if personal injury

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1 resulted;

2 (5) the sophistication and maturity of the
3 child as determined by consideration of the child's home,
4 environmental situation, emotional attitude and pattern of
5 living;

6 (6) the record and previous history of the
7 child;

8 (7) the prospects for adequate protection of
9 the public and the likelihood of reasonable rehabilitation of
10 the child by the use of procedures, services and facilities
11 currently available; and

12 (8) any other relevant factor, provided that
13 factor is stated on the record.

14 D. Notwithstanding the provisions of this section,
15 a youthful offender who previously has been sentenced as an
16 adult in a separate proceeding shall be sentenced as an adult
17 upon conviction for his instant offense.

18 [~~D.~~] E. If the court invokes an adult sentence, the
19 court may sentence the child to less than, but shall not
20 exceed, the mandatory adult sentence. A youthful offender
21 given an adult sentence shall be treated as an adult offender
22 and shall be transferred to the legal custody of an agency
23 responsible for incarceration of persons sentenced to adult
24 sentences. This transfer terminates the jurisdiction of the
25 court over the child with respect to the delinquent acts

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1 alleged in the petition.

2 [E-] F. If a juvenile disposition is appropriate,
3 the court shall follow the provisions set forth in Section
4 32A-2-19 NMSA 1978. A youthful offender may be subject to
5 extended commitment in the care of the department until the age
6 of twenty-one, pursuant to the provisions of Section 32A-2-23
7 NMSA 1978.

8 [F-] G. A fourteen to eighteen year old child
9 charged with first degree murder, but convicted of an offense
10 less than first degree murder, is subject to the dispositions
11 set forth in this section. "

12 Section 2. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2003.

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